



February 1, 2022

J. Matthew DeLesDernier  
Assistant Secretary  
United States Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Re: Release No. 34-93934; File No. SR-NYSE-2020-96; New York Stock Exchange LLC; Order Granting Petition for Review and Scheduling Filing of Statements Regarding an Order Disapproving Proposed Rule Change to Amend its Rules Establishing Maximum Fee Rates to be Charged by Member Organizations for Forwarding Proxy and Other Materials to Beneficial Owners

Dear Mr. DeLesDernier:

The American Business Conference (ABC) is a coalition of midsize growth companies founded in 1981 by Arthur Levitt, Jr. ABC's current chairman is Alfred West, CEO of SEI Investments, Oaks, Pennsylvania.

We are writing to comment on the Commission's decision to review an order by the Division of Trading and Markets to disapprove a proposed rule change of the New York Stock Exchange (NYSE) regarding the setting of maximum fee rates for the transmission of proxy materials to beneficial owners.

**Background** In December 2020, the NYSE filed a proposed rule with the Securities and Exchange Commission (SEC) that would have eliminated its role in the setting of the maximum fee rates that member broker-dealers can charge for forwarding proxy materials to beneficial shareholders.<sup>1</sup> The proposed rule would have ceded the responsibility for setting maximum fees to another self-regulatory organization, the Financial Industry Regulatory

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<sup>1</sup> Exchange Act Release No. 90677 (December 15, 2020), (File No. SR-NYSE-2020-96).

Authority (FINRA). In January 2021, FINRA signaled its opposition to this idea.<sup>2</sup>

In August 2021, the SEC's Division of Trading and Markets disapproved the NYSE's proposed rule change. The Division staff cast doubt that the change "would promote just and equitable principles of trade and protect investors and the public interest, and not permit unfair discrimination between customers, issuers, brokers, or dealers."<sup>3</sup>

On September 1, 2021, the NYSE asked the SEC to review the disapproval order. The Exchange accused the Division of Trading and Markets of using its disapproval order to "commandeer" an unwilling NYSE into "shouldering" a new rate setting effort to update the last such effort in 2013.<sup>4</sup>

On January 7, the SEC ordered a review of the disapproval decision. It invited statements from interested parties regarding its review.<sup>5</sup>

**Comments** In offering our comments we begin, as we have in the past, by underlining the basic fact of the proxy system: it works.<sup>6</sup>

The system provides to issuers and funds of all sizes on an equitable basis secure and timely delivery of proxy materials to beneficial holders. It has done so while achieving a steady decline in the cost of that service. It has shown itself capable of adapting to new ideas from the SEC for advancing and securing corporate democracy. Examples of that include universal proxy, end-

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<sup>2</sup> Letter of Marcia E. Asquith, Executive Vice President, Board & External Relations, FINRA, to J. Matthew DeLesDernier, Assistant Secretary, U.S. Securities and Exchange Commission, January 11, 2022

<sup>3</sup> SEC Release No. 34-92700 (August 18, 2021).

<sup>4</sup> Petition for Review, File No. SR-NYSE-2020-96 (September 1, 2021).

<sup>5</sup> Release No. 34-93934, File No. SR-NYSE-2020-96, (January 7, 2022).

<sup>6</sup> See, e.g., Letter of John Endean, President, American Business Conference to Elizabeth Murphy, Secretary, U.S. Securities and Exchange Commission, Re: File No. S7-14-10, *Concept Release on the U.S. Proxy System*, September 22, 2010: "Critics of the street-side process tend to gloss over, or, worse, denigrate, its central achievement: corporate elections conducted and tallied by an independently audited central processor that yields accurate and timely results without a hint of conflict-of-interest or accusations of fraud. It constantly amazes us that this fact is so little celebrated, although it is central to the maintenance of public confidence in our economic system. It is no small achievement, and as more and more controversial issues find their way onto proxy ballots, it is one that ought to be especially valued by the Commission."



to-end voting confirmation, client-directed voting, and blockchain data distribution and storage.

All of this is not mere “proxy plumbing.” The system is a complex, technology-driven communications and fulfillment network underwritten through fees that are the product of consensus among the key players who depend upon it.

Nothing in the NYSE’s December 2020 proposal for rulemaking suggests otherwise. And, in denying that proposal, the Division of Trading and Markets observed that the Commission “must consider the proposed rule change that was filed” and that reform of the proxy system “is beyond the scope of this proposed rule change.” We agree. It would have been our preference for the NYSE to abide by the Division’s disapproval order.

As FINRA’s January comment suggests, the NYSE’s attempt to abandon its role in the fee setting process appears precipitous.<sup>7</sup> Its haste provided an opportunity for those seeking an exit from the current fee structure to call for eliminating that structure -- at least insofar as it applies to them.

If it is determined that the current fee structure requires updating, it should be revised in its entirety, not piecemeal, and with all participants at the table. Additionally, the SEC should revisit its disclosure requirements with an eye toward reducing or simplifying them.

The SEC has been handed a regulatory hot potato by the Exchange. That is regrettable. It does not, however, give leave to the Commission to abandon a system that has worked so well and for so long for all proxy participants.

Sincerely,



John Endean  
President  
American Business Conference

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<sup>7</sup> “In particular, the rule filing would impose new obligations on FINRA *without the NYSE having engaged in any coordination or notice with FINRA* [emphasis added]” Letter of Marcia E. Asquith to J. Matthew DeLesDernier, January 11, 2021, op. cit.